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SB 2104
Testimony of Amy De Kok
House Education Committee
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Chairman Heinert and members of the House Education Committee, my name is Amy De Kok. I am the executive director of the North Dakota School Boards Association. NDSBA represents all 168 North Dakota public school districts and their governing boards. I am here to express serious concerns about the expansive and unchecked authority this bill would grant to the Superintendent of Public Instruction. SB 2104 fundamentally alters the nature and scope of the Superintendent's and DPI's role, shifting it from an agency that supervises and oversees public education into a regulatory and enforcement body with little to no safeguards against overreach. While ensuring compliance with education-related state laws is important, this bill opens the door to potential abuses of power and politically motivated enforcement.

No Demonstrated Need for This Bill

One of the most troubling aspects of SB 2104 is that it seeks to address a problem that does not exist. There is no evidence of systemic noncompliance with North Dakota state law by public school districts. North Dakota schools have long maintained a strong record of adhering to state educational mandates, working collaboratively with state agencies, and acting in the best interests of students.

This bill appears to be a reactionary measure rather than a response to an actual widespread issue. It is likely being pursued in response to comments made by a superintendent from a single school district following legislation passed during the last legislative session. Legislation should not be crafted as a punitive reaction to isolated incidents, especially when it grants broad and unchecked power that could harm school districts statewide.

By enacting SB 2104, the Legislature would dramatically expand the authority of the Superintendent without any compelling justification, creating unnecessary burdens on schools, increasing the risk of political interference in education, and diverting resources away from student learning. Certainly, we do not have this concern with the current occupant of the office; however, we do not know who may occupy that office in the future and the political motivations of such a future occupant.

Unrestricted Discretion and Risk of Abuse

One of the most alarming aspects of SB 2104 is that it allows the Superintendent to initiate a review of a school district entirely at their discretion, without requiring substantial justification. The bill states that the Superintendent “may conduct a review” based solely on their own determination, with no clearly defined criteria. This provision introduces a dangerous possibility: that school districts could be targeted selectively based on political, ideological, or personal motivations.

Without meaningful constraints, this unchecked authority could result in politically motivated investigations that disrupt school operations, erode trust in educational institutions, and create an atmosphere of fear among educators and administrators. The law should never be a tool for political leverage, yet SB 2104 risks turning the Superintendent’s office into an enforcement agency that could wield its authority arbitrarily.

Lack of Due Process and the Right to Respond

Another fundamental flaw in SB 2104 is that it fails to provide school districts with an opportunity to respond to complaints or allegations before the Superintendent issues a decision. Under the bill, a compliance review can be initiated based on a complaint, but nowhere does it require that the district be given a chance to present evidence, clarify misunderstandings, or defend itself before corrective action is ordered.

This lack of due process violates fundamental principles of fairness and administrative justice. In any regulatory system, those accused of a violation should be given notice of the allegations and an opportunity to respond before a ruling is made. The absence of such a safeguard in SB 2104 means that school districts could face penalties and sanctions without ever having the chance to explain their position.

Further compounding this issue, SB 2104 only provides school districts 10 days after the issuance of a corrective action or sanction to request a hearing. This 10-day window is entirely insufficient for a district to:

1. Gather relevant documentation,
2. Consult legal counsel,
3. Prepare a formal response, and
4. Schedule a fair hearing process.

For a matter as serious as potential state-imposed sanctions, school districts must be given a reasonable timeframe to prepare their case. The current language in the bill does not meet basic standards of due process.

Ambiguous “Full Cooperation” Requirement and Risk of Arbitrary Enforcement

SB 2104 requires that school districts “fully cooperate” with a review by the Superintendent of Public Instruction but fails to define what constitutes full cooperation. The lack of clarity in this requirement raises serious concerns. First, the definition of “full cooperation” is left entirely to the discretion of the Superintendent, meaning school districts will not know what is required of them until after the Superintendent determines they have not complied. In addition, the bill provides no framework for what cooperation entails, leaving districts vulnerable to

arbitrary or excessive demands. Finally, failure to meet this undefined standard of cooperation can lead to sanctions, including financial penalties, without any clear guidance on what constitutes noncompliance.

This provision effectively grants the Superintendent unlimited power to determine whether a district is in violation, even if the district has made a good-faith effort to comply. A vague and subjective requirement for "full cooperation" should not be used as a basis for imposing punitive sanctions.

Sanctions Imposed Without Consideration for the Severity or Nature of the Violation

Another major flaw in SB 2104 is that sanctions may be imposed regardless of the nature of the violation or noncompliance. The bill does not distinguish between minor administrative infractions and significant breaches of state law, yet it grants the Superintendent the authority to issue punitive financial sanctions even in cases where noncompliance is technical or inadvertent.

This lack of proportionality raises serious concerns:

1. Minor infractions could result in disproportionate financial penalties, harming school districts and students rather than addressing meaningful issues.
2. The bill does not include a clear standard for determining when sanctions should be imposed, leaving it entirely up to the discretion of the Superintendent.
3. Even first-time or good-faith compliance issues could result in funding cuts, creating unnecessary financial burdens on schools already operating under tight budgets.

The indiscriminate application of sanctions, without regard to the nature of the alleged violation, is both unfair and harmful to North Dakota's schools.

Infringement on Student Privacy and Federal Protections

SB 2104 also grants the Superintendent access to "any information deemed necessary" for a compliance review. This broad language fails to provide adequate safeguards to ensure that sensitive student information remains protected under federal laws such as:

- The Family Educational Rights and Privacy Act (FERPA), which protects student education records.
- The Individuals with Disabilities Education Act (IDEA), which ensures confidentiality for students receiving special education services.

The bill does not include explicit protections to ensure that compliance reviews do not violate these federal confidentiality requirements, raising serious concerns about potential unauthorized disclosures of student records and other sensitive information. School districts should not be forced into a position where they must choose between complying with an overly broad state review or violating federal privacy laws.

Lack of Expertise and Resources to Exercise Expanded Authority

Beyond the fundamental issues with SB 2104's broad grant of authority, there is also a practical concern regarding DPI's ability to effectively and fairly implement this expansion of power. As indicated by Superintendent Baesler herself before the Senate Education Committee, DPI lacks the staff, expertise, and resources necessary to conduct thorough and appropriate compliance reviews of school districts. Unlike agencies specifically tasked with regulatory enforcement, DPI has historically served as an advisory and oversight body, not an investigative and enforcement agency. Conducting legal and procedural compliance reviews requires personnel with specialized training in education law, administrative investigations, and regulatory enforcement—areas where DPI does not currently have dedicated expertise. Without a clear infrastructure of trained staff, proper review protocols, and sufficient funding, the enforcement of SB 2104's provisions risks being inconsistent, arbitrary, and legally flawed. School districts could face compliance actions from an agency that lacks the necessary qualifications to fairly evaluate alleged violations, further exacerbating concerns about due process and the potential for overreach. If the Legislature were to grant such a sweeping expansion of authority, it would require a significant investment in staff training and resources—something this bill does not provide.

Conclusion

SB 2104 is an unnecessary and reactionary measure that would drastically expand the power of the Superintendent of Public Instruction without sufficient oversight. There is no systemic problem of school district noncompliance that justifies such a broad expansion of authority. Instead, this bill appears to be a response to a single incident, not a well-reasoned policy decision.

The bill's lack of due process, undefined cooperation standards, potential privacy violations, insufficient response time, arbitrary application of sanctions, and punitive financial penalties make it an unacceptable expansion of regulatory authority. For these reasons, I strongly urge the committee to reject SB 2104.

Thank you for your time and consideration. I am happy to answer any questions.